

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Transforming the 2.5 GHz Band ) WT Docket No. 18-120

To: The Commission

**REPLY COMMENTS of BRIDGE THE DIVIDE FOUNDATION, INC.  
And ROCKY MOUNTAIN BROADBAND, LLC**

Bridge the Divide Foundation, Inc. (“BTD”) and Rocky Mountain Broadband, LLC (“RMB”) (collectively, “Joint Commenters”), by their attorneys and pursuant to Section 1.419 of the Commission’s Rules, hereby submit the following Reply Comments in response to the Commission’s *Notice of Proposed Rulemaking*, FCC 18-59, released May 10, 2018 (“NPRM”) which initiated the above-referenced docket.<sup>1</sup> The Commission should expand the coverage for EBS licenses from census tracts to county boundaries and remove educational limitations on the use of the 2.5 GHz band. These changes will serve the public interest by providing educators with flexibility in the use of their spectrum and attract necessary capital to build out the networks, thereby eliminating white spaces. The Commission should award incumbent EBS licensees priority for filing for unassigned blocks in their Geographic Service Areas (“GSAs”). In support thereof, the following is respectfully submitted.

Commercial and educational Commenters alike support using county boundaries and not census tracts to rationalize existing GSAs.<sup>2</sup> Rationalizing existing GSAs to county lines provide

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<sup>1</sup> The deadline for filing Reply Comments is September 7, 2018. *See* DA 18-647 (Chief, WTB) (rel. June 21, 2018). Thus this Reply Comments is timely filed.

<sup>2</sup> *Comments of Competitive Carrier Association* at 2-3; *Comments of Sprint Corporation* at 4; *Comments of Viya* at 14; *Comments of NTCA –The Rural Broadband Association* at 2; *Comments of American Indian Higher Education Consortium* at 1; *Comments of the Wireless Communications Association International* at 5; *Comments of Educators and Broadband Providers for American Rural Counties* at 7.

clear geographical boundaries and predictably for existing licensees and new entrants using the 2.5 GHz band. Regular and easily identifiable license boundaries will reduce interference and other technical issues, thereby maximizing the value of the spectrum to service providers, customers and the public generally.<sup>3</sup> Administrative efficiencies will be realized by conforming licenses to a geographic unit recognized by the FCC's Universal Licensing System, thereby enabling a process by which new EBS license opportunities can be efficiently identified, applied for, processed and granted by the Commission.<sup>4</sup> County boundaries align better with school district service areas.<sup>5</sup> Limiting expansion of GSAs to the nearest census tract on the other hand would allow gaps to continue to exist between GSAs, making it difficult to map, raising technical difficulties and interference concerns and possibly no licenses for these gaps.<sup>6</sup>

There have been multiple suggestions about how much of a county the existing GSA boundary should encompass before that county is added to the GSA. Joint Commenters believe that if any portion of an existing GSA boundary is within the county it should be counted. If this is not the rule, then the advantage of serving a complete school system, or serving a complete city limits would be put in jeopardy. In addition, an irregular circular boundary would still exist or if an existing license lost a county, existing service may have to be curtailed.

Numerous Commenters agree with the Joint Commenters that the Commission should remove the ownership restrictions on holding EBS spectrum to non-profit or governmental institutions as well as the educational use obligations.<sup>7</sup> The Commission's proposal to grant EBS

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<sup>3</sup> *Comments of AT&T* at 6 n.14; *Comments of Northern Michigan University* at 6.

<sup>4</sup> *Comments of America's Public Television Stations and Corporation for Public Broadcasting* at 5.

<sup>5</sup> *Comments of The California K-12 High Speed Network* at 20.

<sup>6</sup> *Comments of Hispanic Information and Telecommunications Network, Inc.* at 4-5.

<sup>7</sup> *Comments of Sprint Corporation* at 9; *Comments of T-Mobile USA, Inc.* at 2; *Comments of Charter Communications, Inc.* at 3; *Comments of VIYA* at 12-14; *Comments of the Wireless Communications Association International* at 8-10.

licensees greater flexibility to determine how best to use their spectrum without unnecessary obstacles will promote more efficient and effective use of the spectrum.<sup>8</sup> Allowing existing licensees to assign or transfer their licenses to entities that are non-EBS eligible will increase investment in and development of the 2.5 GHz spectrum by allowing those who have been and will continue to be the drivers of broad usage of the spectrum to have a lasting ownership stake in its development.<sup>9</sup> Conversion to unfettered commercial operation and eliminating reliance on lease arrangements would make this spectrum a far more appealing band for commercial operators to include in their long term service plans.<sup>10</sup>

The limited flexibility currently afforded EBS licenses to sell their licenses may have been good policy 30 years ago when EBS licenses were issued to provide Instructional Television Fixed Service, but the technological and market changes over the past 30 years have changed the very nature of the service from a television based service to wireless broadband. A valid basis no longer exists for educational licensees acting as necessary middlemen. Instead, the Commission can take the next logical step and promote spectrum efficiency by removing restrictions that have impaired the ability of licensees to make their own decisions and of commercial lessees to maximize utility, investment, and value.<sup>11</sup>

Supporters of continuing the current EBS licensing regime argue removing the educational restrictions on EBS licensing would undermine the original goal of supporting the interests of education.<sup>12</sup> Northern Michigan University credits the success of EBS with

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<sup>8</sup> *Comments of Competitive Carriers Association* at 3.

<sup>9</sup> *Comments of Gallatin Wireless* at 4-5.

<sup>10</sup> *Id.*

<sup>11</sup> *Comments of Verizon* at 4-5; *Comments of Wireless Internet Service Providers Association* at 11-12.

<sup>12</sup> *Comments of Northern Arizona University Foundation, Inc.* at 5-6; *Comments of Voqal* at 3; *Comments of North American Catholic Educational Programming Foundation and Mobile Beacon* at 6.

delivering educational broadband in the Upper Peninsula in Michigan.<sup>13</sup> Others argue the leasing of EBS spectrum to commercial interests provides necessary funding for educational programs, particularly when budget cuts are reducing funds for education.<sup>14</sup>

The changes the Commission proposes in licensing EBS spectrum does not eliminate the benefits EBS provides to nonprofit and educational licensees. EBS licensees would remain in control of their spectrum, but would have greater flexibility in deciding how best to use the spectrum. Nothing proposed would require an EBS licensee to assign or transfer control of EBS spectrum to non-educational licensees. Instead, the EBS licensee would have the ultimate decision making authority to assign or transfer an EBS license to a non-educational party. EBS licensees are best able to determine if they should use their licensed spectrum themselves, enable a commercial lessee to use that spectrum, or divest that spectrum to a non-educational party.<sup>15</sup> EBS licensees are under no obligation to sell to non-educational institutions, but could decide to sell their licenses and reap the benefits of a lump sum payment that could be used to fund important educational and instructional activities.<sup>16</sup> The more likely scenario is most EBS licensees would retain their current licensing arrangements with commercial entities but build upon that relationship to expand service within their educational districts.

The proposed rule changes reflect the economic reality of the EBS marketplace. The vast majority of EBS licensees allow commercial operators to utilize all of their EBS spectrum in constructing broadband networks, have no facilities of their own, and meet their educational

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<sup>13</sup> *Comments of Northern Michigan University* at 3-4.

<sup>14</sup> *Comments of State Educational Directors Association* at 8; *Comments of North American Catholic Educational Programming Foundation and Mobile Beacon* at 6-9; *Joint Comments of South Florida EBS Licensees* at 5.

<sup>15</sup> *Comments of Sprint Corporation* at 9.

<sup>16</sup> *Comments of The Wireless Internet Service Providers Association* at 12; *Comments of Gallatin Wireless Internet, LLC* at 4-5.

requirements by riding over-the-top of the commercial network.<sup>17</sup> Although some educators have built out their own networks, this is the exception and not the norm. Eliminating the educational restrictions on EBS licensees will give them the flexibility to best serve the educational needs of their communities while attracting the necessary capital to build out their own educational facilities.

The Commission should prioritize the licensing of remaining EBS white spaces by opening a filing window only for existing incumbent EBS licensees and only for additional channel blocks within their newly expanded incumbent GSAs. This will allow EBS licensees to aggregate sufficient spectrum to achieve the high speed services demanded for the 21<sup>st</sup> century. If necessary, the Commission can balance the need for additional spectrum blocks with reasonable limitations, such as an EBS licensee holding no more than four of the six EBS channel blocks.

## **CONCLUSION**

The Commission should rationalize existing GSAs using county boundaries. This should be an automatic process, whereby the Commission staff simply update the incumbent EBS licenses in ULS to reflect their expanded licensed service areas.

The Commission should remove the restriction on eligibility to hold EBS spectrum. For-profit entities should be allowed to hold EBS spectrum licenses directly. At the same time, the Commission should remove the requirement that the spectrum be put to educational use. Non-profit and governmental educational institutions should have the flexibility to derive the full value of their holdings in the manner that best suits their needs.

Above all, the Commission should move expeditiously to promulgate new rules and get this fallow spectrum into use. The EBS white spaces have been fallow since the 1970's, when the

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<sup>17</sup> *Comments of the Wireless Cable Association International* at 7-8.

Commission decided to exclude commercial entities from holding the spectrum directly, and have been subject to one filing freeze or another over much of the ensuing generations. The time for pondering has come and gone. The time for action has arrived.

Respectfully submitted,  
**BRIDGE THE DIVIDE FOUNDATION, INC.**  
**ROCKY MOUNTAIN BROADBAND, LLC**

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